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Supreme Court, U.S.
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No. 93-2084

In The
Supreme Court of the United States
October Term, 1993

DAVID BENJAMIN,

Petitioner,

v.

THOMAS ADAM, THOMAS BAILEY, ANDREW BAKAYSA CHARLES BAKAYSA, JOHN BAKAYSA, EDWARD BARRETT, CARL BAUM, CLAIR BAUM, JACK BAUM, JACK BAUMGARTNER, JAMES BEATTY, CARL BECK, EVERTT BELL, GREGG BELL, THOMAS BELL, ALBERT BELL, *et al.*,

Respondents,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA,

Additional Respondents.

Petition for Writ of Certiorari
To the Superior Court of Pennsylvania

SUPPLEMENTAL BRIEF OF PETITIONER

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Pursuant to Supreme Court Rule 15.7, Petitioner files this Supplemental Brief to alert the Court to the relevance of its recent decision in *Livadas v. Bradshaw*, 512 U.S. __, 114 S. Ct. 2068 (1994), to the questions raised in this Petition for Certiorari.[1]

I. ARGUMENT

The instant case raises the substantial conflict that exists between state and federal courts on two important issues of federal labor law. First, state and federal courts are divided on the extent to which §301 of the Labor Management Relations Act ("LMRA") governs the resolution of state-law wage payment claims for the breach of a collective bargaining agreement covered by the LMRA.[2] Because forty-eight states currently have wage payment statutes that appear to allow state-law remedies for the breach of collective bargaining agreements covered by the LMRA, this split promises to grow even wider unless resolved by this Court. State and federal courts are also divided on whether state or federal law governs claims seeking to impose personal liability on corporate officers for the breach of a collective bargaining agreement

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[1] This Court handed down its decision in *Livadas* on June 13, 1994, only a few days before this Petition went to print. Petitioner did not learn of the decision until after the Petition was submitted. Pursuant to Supreme Court Rule 15.7, such a "belated discovery of an important decision ... can be presented in the form of a supplemental brief." ROBERT L. STERN, EUGENE GRESSMAN, STEPHEN M. SHAPIRO & KENNETH S. GELLER, SUPREME COURT PRACTICE 349 (7th ed. 1993). Because Respondents' time for filing an opposition brief to the Petition has expired, this Supplemental Brief is the only opportunity Petitioner has to bring to the Court's attention the relevance of the *Livadas* decision to the Petition for Certiorari.

[2] *Compare, e.g., Wheeler v. Graco Trucking Corp.*, 985 F.2d 108 (3rd Cir. 1993), *reh'g denied*, (Feb. 18, 1993) and *Barton v. Creasey Co. of Clarksburg*, 900 F.2d 249 (4th Cir. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 137 (1990) *with e.g., Lowe v. Imperial Colliery Co.*, 180 W. Va. 518, 377 S.E.2d 652 (1988) and *Laborers Combined Funds of Western Pennsylvania v. Mattei*, 359 Pa. Super. 399, 518 A.2d 1296 (1986).

covered by the LMRA.[3] Twenty-nine states have wage payment statutes that appear to allow the imposition of personal liability on corporate officers absent a showing sufficient to pierce the corporate veil under federal common law. Thus, this split will also increase unabated until this Court intervenes.

In *Livadas v. Bradshaw*, 512 U.S. __, 114 S. Ct. 2068 (1994), a discharged employee challenged the California State Commissioner of Labor's policy construing state law to bar enforcement of state statutes requiring employers to pay all wages due immediately upon the employee's discharge if the terms and conditions of the employee's employment were governed by collective bargaining agreement containing an arbitration clause. The Court held that federal labor law, specifically the protection afforded to employees' rights under the National Labor Relations Act, 29 U.S.C. § 151 et seq., preempted this policy. The Court then went on to hold that the employee's claim against the Commissioner of Labor was cognizable under §1983. In the course of reaching these ultimate holdings, the Court rejected the Commissioner's defense that the state's policy was required by §301 of the LMRA, which preempts state court resolution of disputes that turn on the rights of parties under collective bargaining agreements.

Because *Livadas* did not involve the substantial conflict between state and federal courts concerning the personal liability of corporate officers for the breach of a collective bargaining agreement, this issue remains worthy of this Court's plenary review. And while the Court in *Livadas* did deal with the preemption of state-law claims under §301, it specifically reserved resolution of the division that exists among lower courts concerning the issue implicated in the first question presented in this Petition. However, because *Livadas* is clearly relevant to the

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[3] *Compare e.g., Evans v. Einhorn*, 855 F.2d 1245 (7th Cir. 1988) and *In re Weiss*, 129 B.R. 51 (Bnkr. W.D. Pa. 1991) *with, e.g., Goodwin v. Willard*, 185 W. Va. 321, 406 S.E.2d 752 (1991) *and Laborers Combined Funds v. Mattei*, 359 Pa. Super. 399, 518 A.2d 1296 (1986).

first question presented in this Petition, the Court may wish to grant, vacate and remand this Petition for further consideration in light of *Livadas*, rather than granting plenary review at this time. *See Hart v. Stockman Energie, Inc.*, 512 U.S. ___, 114 S. Ct. 2700 (1994) (petition granted, reversed and remanded for further consideration in light of *Livadas*).

A. *Livadas* is Not Relevant to the Division Between State and Federal Courts Concerning the Personal Liability of Corporate Officers for the Breach of a Collective Bargaining Agreement.

This Court's decision in *Livadas* clearly does not implicate the second question presented by this Petition concerning whether state or federal law governs the personal liability of corporate officers for the breach of a collective bargaining agreement covered by the LMRA. The action for wages in *Livadas* was against the corporate employer that was a party to the collective bargaining agreement — it was not, as in this Petition, an action for wages against an individual officer of the corporate employer.

As summarized in the Petition for Certiorari, the decisions of Pennsylvania and West Virginia state courts holding individual officers personally liable under state wage payment acts for the breach of a collective bargaining are in direct conflict with decisions of federal courts in the Third and Seventh Circuit Courts of Appeals. The decisions of the Pennsylvania and West Virginia state courts are also in conflict with a formidable body of case law that forbids the imposition of personal liability under federal labor law on an individual officer for the breach of a collective bargaining agreement absent a showing sufficient to pierce the corporate veil. There can be little doubt that the identity of the primary participants in the federal labor scheme is of paramount concern to that system. The Pennsylvania Superior Court's decision highlights the importance of that issue not only by redefining "employer" to include a corporate officer — but by stripping, or preempting, that newly defined "employer" of his state-law defenses. *See infra* pp. 8 - 10. Accordingly, the Court

should grant this Petition for Certiorari to resolve the division that currently exists between state and federal courts on this important issue of federal labor law. *See generally* Petition at 16-23.

B. *Livadas* Did not Resolve the Division Between State and Federal Courts Concerning the Preemption of State-Law Wage Payment Claims for the Breach of a Collective Bargaining Agreement.

This Court's decision in *Livadas* also fails to resolve the first question presented in this Petition. Federal courts that have considered §301 preemption of state wage payment claims have consistently held that federal law should govern resolution of wage payment claims for the breach of a collective bargaining agreement covered by the LMRA. Resolution of the wage payment claim in this case should similarly be governed by federal law, both because Respondents' right to compensation arises from a collective bargaining agreement and because resolution of the claim against Petitioner requires interpretation of the collective bargaining agreement. But even if *Livadas* can be read to insulate an employee's state-law wage payment claim from preemption, the question remains whether an employer's state-law defenses should then be similarly insulated. Thus, regardless of whether or not *Livadas* is read to preempt Respondents' WPCL claim, this Petition continues to present important and unresolved issues concerning §301 preemption. However, because the Court's recent decision in *Livadas* is clearly relevant to these issues, the Court may wish to grant, vacate and remand this Petition for further consideration in light of *Livadas*. *See Hart v. Stockman Energie, Inc.*, 512 U.S. __, 114 S. Ct. 2700 (1994) (petition granted, reversed and remanded for further consideration in light of *Livadas*).

1. State and Federal Courts Remain Divided Concerning Whether §301 Preempts Resolution of State-Law Wage Payment Claims for the Breach of a Collective Bargaining Agreement.

Federal courts have consistently held that federal labor law preempts state-law resolution of an employee's wage payment

claim for breach of a collective bargaining agreement covered by the LMRA.[4] *Livadas* did not hold otherwise — indeed, the Court explicitly recognized in *Livadas* the inappropriateness of using that case for resolving the division among the lower courts concerning the application of the principles set forth in the Court's previous labor law preemption precedents. *See Livadas*, 512 U.S. at __ n. 18, 114 S.Ct. at 2078 n.18 ("this case . . . is not a fit occasion for us to resolve disagreements that have arisen over the proper scope of our earlier decisions"). In contrast, this Petition is distinguishable from *Livadas* in a number of respects, all of which make this case the appropriate vehicle for resolving the division recognized by the Court in *Livadas*.

First, in *Livadas* the Court reasoned that §301 "cannot be read broadly to pre-empt nonnegotiable rights conferred on individual employees as a matter of state law." *Livadas*, 512 U.S. at __, 114 S. Ct. at 2078. The rights involved in the instant case, however, are not nonnegotiable rights established by state law: the Pennsylvania Wage Payment and Collection Law ("WPCL") gives the employee or his representative the right to settle or waive any claim. *See* PENNSYLVANIA WAGE PAYMENT AND COLLECTION LAW, tit. 43 §260.9b. Moreover, it is clear that an action under the Pennsylvania WPCL must be grounded upon a contract between the employer and the employee. The Third Circuit, relying on Pennsylvania state court precedents, made this clear in *Weldon v. Kraft*, 896 F.2d 793, 801 (3rd Cir. 1990), stating:

> WPCL does not create a right to compensation. Rather, it provides a statutory remedy when the employer breaches a contractual obligation to pay earned wages. The contract between the parties governs in determining whether specific wages are earned.

See also *Evans v. Einhorn*, 855 F.2d 1245, 1256 (7th Cir. 1988) (recharacterizing Illinois wage payment claim as "straightforward

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[4] For a detailed explanation of the division that exists between state and federal courts concerning whether §301 preempts a wage payment claim for the breach of a collective bargaining agreement, see the Petition at pages 9-16.

§ 301 breach of a collective bargaining agreement action"). It is also clear that Respondents based their WPCL claims on their collective bargaining agreement with their corporate employer: Respondents Complaint attached the collective bargaining agreement as an appendix, specifically referenced the agreement in five different paragraphs and used the wage schedule of the agreement to calculate the wages and benefits owed. Accordingly, this Petition is distinguishable from *Livadas* in that "plaintiff's cause of action itself derives from the collective-bargaining agreement" and state-law litigation would "entail some collective-bargaining agreement application." *See Livadas*, 512 U.S. at __ n.18, 114 S.Ct. at 2078 n.18.

Second, in *Livadas* this Court based its conclusion on the fact that the meaning of the collective bargaining agreement was not at issue. This Court stated:

> The only issue raised by Livadas's claim, whether Safeway 'willfully fail[ed] to pay' her wages promptly upon severance . . . was a question of state law, entirely independent of any understanding in the collective-bargaining agreement between the union and the employer. *Livadas*, 512 U.S. __, 114 S. Ct. at 2079.

Thus, where the meaning of the contract is not in dispute, the mere fact that the collective bargaining agreement must be consulted in the course of the litigation does not warrant preemption of the state claim by §301. *Id.* In contrast, the present case requires an interpretation of the collective bargaining agreement for two reasons. The present case requires interpretation of the collective bargaining agreement to determine who is liable under the agreement. Under federal law, the agreement clearly provides that the corporate employer is liable — yet state law conflicts with that interpretation by providing a remedy against a corporate officer. The present case also requires interpretation of the collective bargaining agreement to determine whether Respondents breached the no-strike clause and thereby provided Petitioner with a defense to their wage claim. The Petition, therefore, is distinguishable

from *Livadas*, both because the state-law litigation would "entail some collective bargaining agreement application" and because "a term of the collective bargaining agreement may or does confer a defense on the employer." *See Livadas*, 512 U.S. at __ n.18, 114 S.Ct. at 2078 n.18.

In the decision below, the Pennsylvania Superior Court agreed that federal labor law governed Petitioner's defense based on the no-strike clause of the collective bargaining agreement. However, it then went on to hold that federal labor law, specifically this Court's decision in *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401 (1981), barred a corporate officer from asserting such a defense. As argued at greater length in the Petition, Petitioner contends that the Pennsylvania Superior Court erred in barring an individual officer confronted with a state-law claim from asserting such a defense. *See generally* Petition at 23-27. In brief, this Court's opinion in *Complete Auto* prohibited the imposition of a damages remedy against individual employees. This holding did not deprive employers of other remedies or defenses. And even if *Complete Auto* did deprive federally-defined employers of remedies or defenses that indirectly impose "damages" on employees, the decision cannot be stretched to impose those same limitations on corporate officers faced with state-law wage payment claims. The purpose of *Complete Auto* was to place union members on an equal footing with the individual shareholders and officers of the employer company, so that federal labor laws would provide a carefully balanced battle between Company and Union. The Pennsylvania Superior Court has ironically invoked *Complete Auto* to destroy that balance.

2. Even if *Livadas* Means that State-Law Wage Payment Claims Are Not Preempted, the Question Remains Whether Employers' State-Law Defenses Are Then Similarly Insulated from Federal Preemption.

Even if this Court's decision in *Livadas* does mean that employees' state-law claims are not preempted, this Petition still presents an important question as to whether employers' state-law

defenses should then be similarly insulated from federal labor law preemption. *See* Petition at 23-27. The Pennsylvania WPCL provides that an employer may raise good faith defenses to the wage action.[5] Relying on this provision, Petitioner argued that Respondents' unauthorized walkout, which precipitated the corporate employer's bankruptcy, served as a basis for Petitioner's state-law defenses of refusal to work and frustration of contract.[6] However, the Pennsylvania Superior Court held that these defenses were "preempted" by *Complete Auto*. Such a lop-sided preemption of an employer's defenses, but not an employee's claims, cannot be tolerated.

Under this Court's labor law precedents, a state law cannot be sustained where it "frustrate[s] the federal scheme," *Allis-Chalmers Corp. v. Lueck*, 71 U.S. 202, 209 (1985) (quotation omitted). It is hard to imagine a state regulation more frustrating to the carefully balanced federal scheme than one that establishes a parallel universe in which employees are vested with additional weapons, while employers have their weapons "preempted." This case highlights for the Court with a particular sharpness how a parallel system of state labor law can upset the precise balance embodied in our federal labor law system. Petitioner asks this Court to grant this Petition in order to confront this unresolved and important issue.

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[5] The Pennsylvania WPCL provides in pertinent part as follows:

> A good faith dispute or contest as to the amount of wages due or the good faith assertion of a right of set-off or counter-claim shall be deemed a satisfactory explanation for nonpayment of such amount in dispute or claimed as a set-off or counter-claim.

See PA. STAT ANN. tit. 43, §260.9a(c)

[6] *See Pennsylvania Railroad v. Bost*, 104 Pa. 27, 32 (1883) (refusal to work recognized as defense in action for wages); *Commonwealth, Dept. of Property & Supplies v. Berger*, 11 Pa. Cmwlth. 332, 312 A.2d 100, 106 (1973) ("where one party to a contract is himself the cause of a failure of performance by the other party, he cannot take advantage of his own failure").

II. CONCLUSION

For the foregoing reasons, the Court should issue a Writ of Certiorari to the Pennsylvania Superior Court. Alternatively, this Court should grant, vacate and remand this Petition in light of this Court's decision in *Livadas v. Bradshaw*, 512 U.S. ___, 114 S. Ct. 2068 (1994).

Respectfully submitted,

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